IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1555 of 2003
with
MISC.CIVIL APPLICATION NO. 817 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANAGING DIRECTOR,LKP MERCHANT FINANCE LTD. & 1 - Appellant(s)
Versus
JAIMINIBEN HIRENBHAI VYAS - Defendant(s)

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Appearance :
MR PA JADEJA for Appellant(s)
SMT JAIMINIBEN HIRENBHAI VYAS, Party-in-person – respondent

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 03/08/2007

ORAL JUDGMENT

1. The Managing Director, LKP Merchant Finance Ltd., and Shri Paragbhai C.Mehta, Executive Director, the appellants – orig.defendants, have

filed this First Appeal against the judgment and decree dated 18.2.2003 passed by the learned Judge, City Civil Court, Ahmedabad in Civil Suit No. 5050 of 1995. By the impugned judgment and decree, the learned Judge was pleased to declare that the impugned order of termination dated 1.9.1995 passed against Jaiminiben Vyas, orig.plaintiff respondent herein is illegal, unreasonable and bad in law being in violation of principles of natural justice and fair play and without giving any notice to the plaintiff. The learned Judge has further held that the plaintiff is entitled to recover the total amount of Rs.1,20,000/- with interest at the rate of 6% p.a. From the defendants from the date of filing of the suit till realisation.

2. The appeal was filed somewhere in May 2003 and various orders have been passed from time to time. However, ultimately, when the matter was placed before this Court, this Court passed an order on 5.7.2007 to the effect that the matter to be placed for final disposal on 17th July 2007.

On 17th July 2007, Mr.P.A.Jadeja, learned advocate appeared on behalf of the appellants and prayed for some time and therefore, the matter was adjourned to 31st July 2007. On 31st July 2007, this Court was not available and the matter was kept on 1st August 2007 and thereafter on 2nd August 2007. On 2nd July 2007, the matter was heard and again the matter was kept for hearing on 3.8.2007, i.e. today when the matter was heard finally.

3. The facts giving rise to filing of the present appeal are as under:

3.1 Smt.Jaiminiben Hirenbhai Vyas, original plaintiff had filed Civil Suit No. 5050 of 1995 before the City Civil Court, Ahmedabad with a prayer to declare that the order of termination dated 1.9.1995 passed by the original defendant Company is illegal and she may be continued in service and to direct the original defendant Company to pay Rs.7,500/- from the date of

termination and further direct to pay an amount of Rs.8,000/- for the period from 1.8.1995 to 2.9.1995 and other reliefs.

3.2 In the plaint, it has been contended that the plaintiff is an M.Com., I.C.W.A. (Inter) and she holds M.Com. Degree (Special Accounting). The defendant Company had appointed the plaintiff by letter dated 30.1.1995, which is at Exh.35 to the plaint, as Accounts Executive on a basic salary of Rs.4,000/- p.m. + Conveyance Allowance of Rs.1,000/- p.m. She was appointed on probation for a period of six months from the date of joining. There were several conditions in the said letter including "Notice Period" which states that,

> "Management reserves full rights in terminating your services by giving 24 Hours notice and extending your probation period related to your performance in the Company. Similarly you will be required to give us One Month's notice in writing for leaving the

job.”

3.3 Pursuant to the said order, the plaintiff started working with the defendant's Company. It may be noted that ultimately, pursuant to the order dated 30.1.1995, the plaintiff joined the Company on 15.2.1995. The defendant has also issued another letter dated 31st Aug.1995, which is at Exh.36 to the plaint, in which it is stated that they were pleased to inform her that she has been confirmed and absorbed in the Company as on from 31st Aug.1995 to be currently posted at LKP Merchant Financing Ltd., Ahmedabad as an Accounts Manager. Thereafter she has worked upto 31st Aug.1995 on probation for six months. Thereafter from 31.8.1995, she was promoted to the post of Accounts Manager on permanent basis and was given emoluments of Rs.7,500/- p.m.

3.4 It is the plaintiff's case that subsequently, by letter dated 1st Sept.2005, which is at Exh.37, the plaintiff was informed that her

services have been terminated with immediate effect and she should hand over the charge to one Mr.Milesh Hamlai and also to hand over all the proper papers, books of accounts, keys of the office, safe keys etc. and other belongings of the office to said Mr.Milesh Hamlai. It appears that in view of the above letter, the plaintiff had handed over the items which were in her possession to said Milesh Hamlai along with a letter dated 2nd Sept.1995, which is at Exh.38 to the plaint. The defendant had also given a cheque for Rs.4,000/- being salary and another cheque for Rs.2,000/- towards allowance for the month of August salary. The plaintiff has produced the above letters along with the suit. The plaintiff has also produced the cheques which are dishonoured in this behalf.

3.5 Being aggrieved and dissatisfied by the aforesaid action, the plaintiff has filed the Civil Suit No. 5050 of 1995 before the City Civil Court with a prayer that the order of

termination dated 1.9.2005 passed by the defendant is illegal and bad and the Court may direct reinstatement of service of the plaintiff. She further prayed that till the suit is disposed of at least she may be paid the salary of Rs.7,500/- p.m. and Rs.8,000/- from 1.8.1995 to 2.9.1995/- which she has not been paid.

3.6 Along with the suit, the plaintiff has produced ten documents vide list Exh.3 in this behalf.

3.7 The plaintiff has also produced certain documents which are exhibited and as were Mark 3/9 – Exh.74 wherein some writing by one Darshna Desai and Mr.Milesh Hamlai is there, but there is no date or signature and in the notice issued by the defendants, they have stated that they have terminated the services of the plaintiff from 1.9.1995 which was published in the newspaper on 20.9.1995, which is produced at Exh.75.

3.8 The plaintiff also produced another list of documents at Exh.25, i.e. about 9 documents. She has also given explanation to the defendants on 9.9.1995, at Exh.39. After going through the record, it appears that the plaintiff has produced the following documents:

(1) Letter of appointment dated 30th January 1995, at Exh.35;

(2) Letter dated 31st August 1995 whereby the plaintiff was confirmed in service, at Exh.36;

(3) Letter dated 1.9.1995 by which the services of the plaintiff was terminated with immediate effect, at Exh.37;

(4) Cheque dated 1.9.1995, which was given by the defendant for Rs.4,000/- in favour of the plaintiff, which was returned, at Exh.40;

(5) Cheque dated 1.9.1995 also drawn in favour of the plaintiff for Rs.2,000/- by

the defendant which was also returned, at Exh.41;

(6) The Bank advice dated 2.9.1995 with respect to dishonour of the cheques, at Exh.42;

(7) Letter dated 2.9.1995 by the plaintiff in connection with handing over the charge, at Exh.38.

3.9 The trial Court has framed the Issues on 27.7.2003, at Exh.33.

4. When the matter was placed before the City Civil Court, the Court did not grant interim relief vide order dated 30.7.1996.

5. Before the trial Court, the plaintiff herself was examined at Exh.34 and she has narrated all these facts and stated that without giving any notice to her, her services were terminated. Though she was cross examined, nothing has come on record.

6.1 Mr.Milesh Hamlai, on behalf of the defendant, was examined at Exh.161 and also on behalf of the employer. It has been stated by him that the plaintiff was not employed by the defendant Company in this behalf and whatever action they have taken is legal and valid. He was also cross examined in this behalf.

Trial Court's Findings:

7. The trial Court, after going through the evidence on record, documentary as well as oral evidence, has come to the conclusion that the plaintiff has proved that the defendants have terminated her services without following the due procedure of law, which is arbitrary, illegal and bad in law and therefore, the declaration is sought for with appropriate damages in terms of compensation. The learned Judge has held that the suit be allowed only on the ground that the defendant company has not applied the mind and terminated the services of the plaintiff in

flagrant violation of the principles of natural justice and fair play without giving any reasons and an opportunity to the plaintiff to be heard.

8. However, as regards compensation is concerned, as the plaintiff was unemployed when the suit was filed on 29.9.1995. So, she is entitled to damages resulting into just compensation. While awarding compensation, the learned Judge has arrived at the salary of Rs.5,000/-p.m. (which was given to her last) and half of the same has been considered as damages and hence, monthly loss of Rs.2,500/- is considered which comes to Rs.30,000/- per year. However, the learned Judge has taken a multiplier of 4 years in this case and an amount of R.1,20,000/- has been arrived at as compensation under the head of loss of compensation in terms of loss of salary as claimed by the plaintiff. The learned Judge has also awarded Rs.8,000/- towards salary for the period from 1.8.1995 to 2.9.1995. Further, the learned Judge considering

that mental pain, shock and suffering undergone by the plaintiff, has awarded Rs.10,000/-. Thus, a total amount of Rs.1,38,000/- has been awarded by the learned Judge. However, as the plaintiff was working and gained an amount of Rs.17,500/- for a very short period, the said amount has been deducted from the above amount, and therefore, it has been held that the plaintiff is entitled to Rs.1,20,000/- (Rs.1,38,000 – Rs.18,000/-) and the original defendants are liable to pay the said amount with interest @ 6% p.a. from the date of filing of the suit till actual payment. The learned Judge further awarded costs of Rs.3,500/- also as the plaintiff has suffered a great loss and mental pain.

Contentions of Appellants before this Court:

9. Mr.P.A.Jadeja, learned advocate appearing for the defendants stated that the order of termination is legal and valid as the defendants have issued notice as as contemplated as per order given to the plaintiff. He further stated

that in any way of the matter, the compensation awarded by the trial Court is very high as the plaintiff has not worked and hence “no work no pay” principle to be applied and hence, the learned Judge ought not to have granted such a huge amount as compensation to the plaintiff. Learned advocate has invited my attention to the order of appointment and the order of termination of the plaintiff in this behalf. As per the order of appointment, when the defendant desired to terminate the services, 24 hours notice has to be given. As regards the order of termination is concerned, the said order states that the services of the plaintiff is terminated with immediate effect. In spite of that, according to Mr.Jadeja, the order of termination is legal and valid.

10. On behalf of the respondent plaintiff has tried to support the order of the trial Court, however, on legal aspects, she was unable to assist the Court. But, as she has been appearing

as party-in-person, I have given my anxious consideration on the merits of the matter.

Findings and Conclusion:

Principles of Natural Justice:

10.1 It is well known principle that there are certain basic values which the man can cherish throughout the ages. A man looked around him and found the ways of men to be cruel and unjust and so also their laws and customs. Natural justice is an important concept in administrative law. It is not possible to define precisely and scientifically the expression 'natural' justice. The principles of natural justice or fundamental rules of procedure for administrative action are neither fixed nor prescribed in any code. They are better known than described and easier proclaimed than defined. 'Natural justice' has meant many things to many writers, lawyers and systems of law. It has many colours and shades and many forms and shapes. It is known as 'substantial justice', 'divine justice',

'fundamental justice', 'universal justice', rational justice', 'fair play in action'. It is a great humanizing principle intended to invest law with fairness to secure justice and to prevent miscarriage of justice. (see “**LAW OF WRITS**” by C.K.Thakker, (6th Edition 2006) p.259-263). (Re: Nature and Scope of Natural Justice; object of natural justice, and historical development; and also natural justice and provisions).

10.2 Natural justice is considered that part of law which relates to the administration of justice.

10.3 The natural justice has two principles : (1) No man shall be a judge in his own cause, or a man cannot act as judge and at the same time a party or suitor; or the deciding authority must be impartial and without bias; and (2) *Audi alteram Partem*: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness

on the part of the deciding authority.

11. In the present case, as regards the first principle is concerned, the same is not relevant and therefore, I do not propose to discuss the same. However, so far as the second principle is concerned, i.e. *Audi alteram partem*, the same will have to be considered. The said principle provides that hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that both the sides must be heard before passing any order. The said principle comprises of two things:(1) **Notice**; and (2) **hearing**.

Principle regarding notice:

Right to notice:

11.1 The word 'Notice' originated from the Latin word '*Notitia*' which means 'being known'. In its popular sense it is equivalent to information, intelligence or knowledge. In legal sense, it embraces a knowledge of circumstances that ought to induce suspicion or belief, as well

as direct information of that fact. (Re: "**ADMINISTRATIVE LAW**" by I.M.Massey, 6th Edition – page Nos.187 & 188).

11.2 In this behalf, the defendants have issued notice and directed the plaintiff to be terminated immediately and therefore, there is no question of any hearing involved. It is only a question of principle regarding notice as to whether the principle embodied regarding notice is complied with by the defendants which is to be considered by this Court.

Audi alteram partem

(b)(Meaning)

11.3 *Audi alterm partem* means 'hear the other side', or no man should be condemned unheard, or 'both the sides must be heard before passing any order.'

(b) Principle explained:

This is the first principle of civilised jurisprudence and is accepted by laws of Men and God. In short, before an order is passed against any person, reasonable opportunity of being heard must be

given to him. Generally, this maximum includes two elements: (i); Notice; and (ii) Hearing.

Before any action is taken, the affected party must be given a notice to show cause against the proposed action and seek his explanation. It is a *sine quo non* of the right of fair hearing. Any order passed without giving notice is against the principles of natural justice and is *void ab initio.* [Re: Hon'ble & Respected Mr. C.K.Thakker: **"Administrative Law"** (1992 Edition), Spp. 183-184](Now Hon'ble Judge of Supreme Court of India).

11.4 Now, I refer to the judgment of the Hon'ble Apex Court in the case of Canara Bank and ors. v. Debasis Das and ors., reported in (2003) 4 SCC 557. In that matter, the Hon'ble Apex Court has considered the principles of natural justice at para 13 on page 570 and also considered natural justice and legal justice in para 14. For our purpose, para 15 of the said judgment is reproduced as under:

"15. The adherence to principles of natural justice as recognized by all civilized States is

of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural

justice.”

11.5 Once this Court comes to the conclusion that there is a breach of natural justice, namely, required notice has not been given, what is the effect of breach or contravention of the principles of natural justice. So far as this Court is concerned, it is fairly well settled and courts have consistently taken the view that whenever there is violation of any rule of natural justice, the order is null and void. It is automatically null and void without more ado'. (Re: "**Law of Writs**" (6th Edition 2006) by C.K.Thakker, p.426)(Now, Hon'ble Judge of the Supreme Court of India).

12. Here, in this case, admittedly, the defendants have passed the order of termination of the plaintiff with immediate effect even though it is contemplated in the appointment letter to give 24 hours notice, in this behalf. It may be noted that the appellant-plaintiff has been appointed vide appointment order dated 30th Jan.1995 and she has served from 15th Feb.1995

till 31st Aug.1995. There is no dispute that she has worked sincerely, diligently and honestly and there is no complaint alleged against her in this behalf. In fact, in the oral evidence, she has stated that the defendants had decided to increase the salary from Rs.7,000/- to Rs.7,500/-. But, unfortunately, the said letter is not on record of the case though there is oral evidence about mentioning of the same. It is also not in dispute that on 31st Aug.1995, the defendants have confirmed the plaintiff, however on 1st Sept.1995, her services have been terminated. In view of this, the first contention of the Mr.Jadeja, learned advocate for the defendants that the finding of the learned trial Judge that the said order is illegal, bad in law, and is vitiated and it is to be set aside, cannot be accepted in view of the basic principle of administrative law and the rules of natural justice and principles of notice which I have narrated earlier.

13. As regards compensation, the learned Judge has taken Rs.5,000/- p.m. How the learned Judge has considered compensation as Rs.2,500/- p.m. as monthly loss, which comes to Rs.1,20,000/- per year. The judgment has been delivered by the learned Judge in the year 2003. Though there is a lapse of about seven years period, the learned Judge has taken only four years period for awarding the above compensation. In my view, the learned Judge has taken a very reasonable figure in this behalf because admittedly, right from the day of termination, the plaintiff has not served anywhere even though she is an educated lady having M.Com. and I.C.W.A. So, looking to the amount of compensation which has been very meagre awarded by the learned Judge is absolutely just and reasonable in this behalf. In view of the same, the contention of the learned advocate for the defendants that the compensation is on a higher side is not correct and on the contrary, the learned Judge has taken into consideration several aspects in this behalf.

14. The contention raised by the learned advocate Mr.Jadeja for the defendants that the principle of “No work, No pay” would apply in this case cannot be accepted because the learned Judge has taken into consideration of Rs.2,500/- only as her monthly income for granting compensation which comes to Rs.1,20,000/- per year. If the learned Judge would have taken into consideration the entire salary for the purpose of calculating the income, then the amount of compensation would have become a huge amount. In view thereof, the finding of the trial Judge is absolutely legal and correct in this behalf and there is no substance in the submission raised by the learned advocate for the defendants in this behalf.

15. In view of the above, the present appeal is dismissed with costs which is quantified at Rs.5,000/-. The judgment and decree dated 18.2.2003 dated 18.2.2003 passed by the learned Judge, City Civil Court, Ahmedabad in Civil Suit No. 5050 of 1995 is confirmed. It may be noted

that the trial Court has held that the impugned order of termination dated 1.9.1995 is held illegal, unreasonable and bad in law being in violation of principles of natural justice and fair play and without giving any notice to the plaintiff. The said finding is also upheld. As regards compensation, the trial Court has held that the plaintiff is entitled to recover the total amount of Rs.1,20,000/- with the interest at the rate of 6% p.a. From the defendants from the date of filing of the suit till realization, i.e. 29.9.1995. If we calculate the interest @ 6% on Rs.1,20,000/-, the monthly interest would be Rs.600/- and the yearly amount of interest would be Rs. 7,200/. If that be so, from 29.9.1995 to 31.8.2007, would come to Rs. 85,800/- The City Civil Court has awarded cost of Rs.3,500/- and this Court has also awarded cost of Rs.5,000/- as costs. Therefore, the total amount comes to Rs.2,14,300/-. It has been submitted that the defendants have only deposited Rs.1,80,000/-. However, they have re-deposited the said amount

with interest of Rs.8,222/- (Rs.1,80,000/- + Rs.8,222/-) in the Registry of this Court on 4th Aug.2006. The Registry is directed to pay an amount of Rs.1,88,222/- (Rupees One Lac eighty-eight thousand two hundred twenty-two only) to the plaintiff by way of A/c.payee cheque on proper verification. The defendants are directed to deposit the balance amount of Rs.34,300/- by 31st August 2007.

16. In view of the dismissal/disposal of the main First Appeal, the Misc.Civil Application No. 817 of 2007 does not survive and is disposed of accordingly. Notice is discharged.

(K.M.Mehta, J.)

Sreeram.